

## § 199.207

this subpart or other DOT alcohol testing rules and that acts on behalf of the operators.

*Covered employee* means a person who performs on a pipeline or at an LNG facility an operation, maintenance, or emergency-response function regulated by parts 192, 193, or 195 of this chapter. *Covered employee* and *individual* or *individual to be tested* have the same meaning for the purposes of this subpart. The term covered employee does not include clerical, truck driving, accounting, or other functions not subject to parts 192, 193, or 195. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.

*Covered function (safety-sensitive function)* means an operation, maintenance, or emergency-response function that is performed on a pipeline or LNG facility and the function is regulated by parts 192, 193, or 195.

*DOT agency* An agency (or operating administration) of the United States Department of Transportation administering regulations requiring alcohol testing (14 CFR parts 61, 63, 65, 121, 135; 49 CFR parts 199, 219, 382, and 654) in accordance with part 40 of this title.

*Employer or operator* means a person who owns or operates a pipeline or LNG facility subject to parts 192, 193, or 195 of this chapter.

*Performing (a covered function)*: An employee is considered to be performing a covered function (safety-sensitive function) during any period in which he or she is actually performing, ready to perform, or immediately available to perform such covered functions.

*Refuse to submit (to an alcohol test)* means that a covered employee fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with the provisions of this subpart, or engages in conduct that clearly obstructs the testing process.

*Screening test* means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.

*State agency* means an agency of any of the several states, the District of Columbia, or Puerto Rico that partici-

## 49 CFR Ch. I (10-1-97 Edition)

pates under the pipeline safety laws (49 U.S.C. 60101 *et seq.*).

[Amdt. 199-9, 59 FR 7430, Feb. 15, 1994, as amended by Amdt. 199-13, 61 FR 18519, Apr. 26, 1996; 61 FR 37224, July 17, 1996]

### § 199.207 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this subpart preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and this subpart is not possible;

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this subpart; or

(3) The State or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.

(b) This subpart shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

### § 199.209 Other requirements imposed by operators.

Except as expressly provided in this subpart, nothing in this subpart shall be construed to affect the authority of operators, or the rights of employees, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation.

### § 199.211 Requirement for notice.

Before performing an alcohol test under this subpart, each operator shall notify a covered employee that the alcohol test is required by this subpart. No operator shall falsely represent that a test is administered under this subpart.

### § 199.213 Starting date for alcohol testing programs.

(a) *Large operators*. Each operator with more than fifty covered employees on February 15, 1994 shall implement the requirements of this subpart beginning on January 1, 1995.